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Civilized commercialism

St. Louis, Mo.

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Where there is not equality of economic opportunity there will not long be political equality.

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1916

*Is our civilization rotten to the core?
Is man in economic chains?
Business will either coordinate or be
Coordinated by the State!!*

CIVILIZED COMMERCIALISM:

REGULATION OF BUSINESS DESPOTISM INTO A BUSINESS REPUBLIC

*Is there no economic equality of opportunity?
Where there is privilege there is no equal freedom.*

BY

ERNEST G. STEVENS

OF THE NEW YORK BAR

160 Broadway 2733 Courtland

WITH THE COMPLIMENTS OF THE WRITER

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CIVILIZED COMMERCIALISM: REGULATION OF
BUSINESS DESPOTISM INTO A
BUSINESS REPUBLIC.

"Fear is an instructor of great sagacity and the herald of all revolutions. One thing he teaches, that there is rottenness where he appears. He is a carrion crow, and though you see not well what he hovers for, there is death somewhere. Our property is timid, our laws are timid, our cultivated classes are timid. Fear for ages has boded and mowed and gibbered over government and property. That obscene bird is not there for nothing. He indicates great wrongs which must be revised."—Emerson's Essay on Compensation.

Man now believes himself free and everywhere he is in economic chains. Injustice is in operation. At present there is only partial economic freedom. There is no economic equality of opportunity. What would be said, as to political equality, if the Constitution limited the Presidency to possessors of \$50,000,000 and cabinet offices and senatorships to owners of \$10,000,000? Obviously—that wealth, politically, was privileged. Yet, who with only \$100,000 could now long run an oil refinery or steel mill although he might run it most economically and efficiently? If no one, as most assert, obviously wealth is privileged—commercially. Every branch of business now limited by our commercial system, as effectively as by a constitution, to possessors of \$100,000,000, or a lesser or greater sum, means a lessening of economic opportunity and a contraction of economic freedom which have only to progress to contract still further, and completely, that political freedom founded by the fathers. It means that the up-rearing of a new privilege has begun. Limitation by our commercial system is a different thing from limitation through lack of capital or ability. Those who, with sufficient capital and ability to survive in fair competition, cannot now do so against unfair competition are conquered by conditions permitted by the present system, not by their own short-

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comings. It should be no more necessary for business men to be their own protectors against unfair competition than for the wayfarer to rely, for self-protection, only upon his own strength. Police regulations in the common interest, alike upon the business highway as upon the physical, should protect all alike from assault and rapine.

Nor do economic freedom and equality consist, merely, in every man with \$1,000 or \$100,000 having an equal opportunity, respectively, with every other man possessing \$1,000 or \$100,000. If they did—again, this time by wealth, would be erected the aforesaid caste of classes. Class privilege would then be freedom! Freedom to the fathers meant freedom from class as well as king. When freedom no longer means equal freedom for all classes there is no longer freedom from a king. Economic freedom and equality, like political, mean the absence of oppression. As, with legal and political equality, no man with \$100,000,000 possesses the right to commit a physical assault and battery upon the man with one dollar, or with none, so with economic equality none possesses the right to use his money as an economic club. All traders' paths are on the broad highway of commerce, as on the physical highway, but each should go his own. Zigzagging to the injury of other travelers is as little allowable upon one as the other. Such zigzagging upon the physical highway is not now permitted to the rich. It cannot continue upon the commercial and the nation continue free. Complete political freedom and class economic subjection are inconsistent. We can have one or the other—not one *and* the other. That there is oppression in our present economic system has long been recognized. What is as yet unrecognized is the source and nature of the wrong.

Freedom to oppress has always, by some, been considered freedom. The eyes of such need to be opened. The eyes of the others only need to see. In barbarism, as in our barbaric commercialism, oppression is considered freedom by the oppressor. His eyes never open, voluntarily,

to the right of equality. The eyes of the many who are oppressed first perceive that right. The search is then often long for a way to its operation. The path to political freedom was long and hard. As once kingly power, barbaric commercialism now holds the glamor of the past. Yet the only way to retain our hard-won political freedom is to pass with seeing eyes to economic freedom. There is no economic freedom when the man with \$1,000 is at liberty to compete on an equality with the man with \$1,000,000 only when the former has acquired \$1,000,000. There is no equal liberty to acquire in barbaric commercialism. The caste system of privileged wealth prevents. There would be no equality before the law were men weighing three hundred pounds at liberty physically to strike men weighing one hundred pounds, although the latter were given an equal right to strike whenever they might weigh three hundred pounds. Most, through no fault of their own, could never bring their weight to three hundred pounds. Thus there would be a small, privileged class of three hundred pounders.

Such were swept away, legally if not politically, by the barons at Runnymede. Such have crept back, commercially, by calling privilege freedom—though meaning by freedom the freedom to oppress. The new privilege is more grinding than, as it lacks the occasional liberality of, that "when knighthood was in flower." The accolade of the former is never given gratis. Oppression must be struck down whenever it rears its head. Otherwise privilege arises. Where there is privilege there is no equal freedom. Where there is economic privilege there is no economic equality of opportunity. Where there is not economic equality of opportunity there will not long be political equality. Only with economic equality of opportunity can the freedom of the fathers permanently endure. Only with the business republic can the political republic, except in form, long survive.

The problem of the trusts is the problem of monopoly. The primary evil in monopoly is business oppression—an old evil in a new form. A solution is possible if we live in a world of order—of cause and effect—not of chaos. That this is such a world all science asserts. Solutions of problems of science, when found, usually turn out to be as simple as they are scientific. The solutions for monopoly heretofore proposed have been empirical. Symptoms have been treated as the supposed disease. The remedies proposed have been as complex as they were unscientific. Justly can the captain of industry complain of a solution which strikes down all combinations because some are bad. As well might the state, for the suppression of crime, imprison all citizens because some are criminals.

The men of large business see the economy possible in large operations. The public sees the evil in business oppression. The former believe it economically and morally wrong to destroy trusts because they are large and they are right. They believe it possible to carry on large business without oppression. They are entitled to the opportunity. Even if none is now doing so the opportunity, in the public interest, should not be foreclosed. The public is equally entitled to have oppression eliminated from business. None should be restricted to small business because some with large commit oppression. All should be restricted from oppressing. Only thus can the evil be eliminated without destroying the good—and the good is entitled to remain. No scientific solution will destroy it, however great the present evil or however little the present good in trusts. Nor will a scientific solution destroy trusts. It will only eliminate their evil. If any prove, with their evil eliminated, unfitted to survive the fault will be their own. The peaceful demise of such, however indirectly caused, will constitute a public boon. Those that survive will be an unmixed public good.

The first requisite in a scientific solution is personal, not corporate, responsibility for business oppression. Cor-

porations will commit no crimes when men refrain from committing them. Accordingly, if the law will take care of the crimes of men the crimes of corporations will take care of themselves. Incidentally, some undeserved mulcting of innocent stockholders will be eliminated. The next necessary step is exactly to define those business crimes which sum up into that business oppression which destroys business equality of opportunity. *E converso*, to have business equality of opportunity that system of equal rules is needed which will bring all business despots under the equal rule of a business republic. There should be no separate law for trusts but the same penal business law for all men. This at once eliminates the pursuit of monopoly by suit in equity. When monopoly commits crime some human culprit deserves the penal code. When no crime is committed no pursuit is deserved. The suit in equity has heretofore been pointed at monopoly, notwithstanding equity's entire lack of jurisdiction over crime, only because symptoms were suspected to be evil while the evil itself was unperceived.

Opportunity for business oppression was left wide open by the unequal rule of *Caveat Emptor*: Let the buyer beware. The seller was given by law the privilege the poacher takes. The lowest pothunter has yet to snare a bird able to beware. *Caveat Emptor* can with equal truth be freely translated: Let the seller snare. The buyer's right only to beware means the seller's full right to snare. Had the opposite rule been adopted (*Caveat Venditor*: Let the seller beware, viz.: Sell a sound article or refund the price), buyers would merely have been given equal rights with sellers. Our Anglo-Saxon jurisprudence, working from precedent to precedent, once started upon the right track would have then been equal to one more step, viz: Give buyers equal rights among themselves. This would necessarily have secured for sellers equal rights among themselves. Only by oppressing some buyers and favoring others does the great octopus, Monopoly, first begin to

acquire sufficient strength, as a seller, to oppress all other sellers.

Caveat Emptor both left the way open to unregulated competition and, later, partially prevented perception of proper regulations. The natural result of unregulated competition is monopoly. Business competition, unregulated, has three stages. First, in the beginnings of business in a given field many small individual sellers compete on fairly even terms. At length, greater ability or better opportunity enables some to amass more capital than the others. It is then possible for the stronger to kill off the weaker by underselling only to the customers of the latter. Those who remain at the end of this stage are all small octopuses. In the second stage the same process is repeated among octopuses. With competition pursued to the bitter end one is billeted to be the great octopus. But the trust maxim, Where combination is possible competition is impossible, has all along been operating. No octopus knows its billet. When the number is reduced to a fair company there is usually combination. Combination is the alternative of extinction for all not destined to receive the final billet of the great. Certainty is usually preferred by all to uncertainty—half a loaf to none. The third stage marks the reign of the great octopus. Whether this single occupant of the field arrived by the process of extinction or combination, the result was equally worked out by natural law. It is as natural for men to unite as to fight in the face of such certain future disaster,—with uncertainty only as to the recipients,—and in fact more natural.

The foul process thus begins with favor for the few. Those customers of the weaker who received "cuts" denied to others were favored. The others who paid the stronger's higher prices were oppressed. They were denied equal treatment and received business oppression in its first *direct* form. Monopoly's power fatally to oppress other sellers, though *indirect*, and later in the second

direct form the entire public necessarily unfolds from the first. The first is partial in scope, the second complete. By oppressing *some* buyers it is able to destroy *all* other sellers. Having destroyed all other sellers, it is then able to oppress all buyers. To end the final evil in this fatal power of monopoly it is necessary to stop the process by which it grows. To stop the process three penal rules are needed:

1. *Each seller must treat all his customers alike by selling to all, at any particular time, at the same price, plus freight, if any.*

There must be no selling of the same thing by any one seller at different prices at the same time. Differences due to freight are alone excepted. All prices must be f. o. b. with freight added. Selling below cost, if done at all, must be done over the seller's entire trade field. This will be sufficient protection of the "little fellow." The larger the trust the more quickly, while clubbing a "little fellow," will it bleed itself to death. Such self-bleeding, as a concomitant, will sufficiently prevent unfair clubbing by sheer brute strength of superior capital. No evasion should be allowed because of difference in quantities sold. The large buyer buys more, not as a favor to the seller, but because he needs more. He also gets more and should not pay less. Any saving in expense distributed at all should be equitably distributed in a lower price to the seller's entire trade. Objectively, the seller is not in business solely to benefit the large buyer but his entire trade which is all necessary to his total profit. Reduction for wholesale quantities is only a form of unfair rebating. Unfair rebating is special privilege. Special privilege entails many evils. The seller should therefore fix the unit most convenient for him to sell and for that unit fix the price whether sold alone or with any number of other units. At the same time, there is no practical reason (except for the possibility of evasion opened) why this rule cannot be

framed to allow wholesale and retail selling by the same seller, provided all customers are treated alike in each department. The rule as above framed expresses the true principle.

The above rule is the doctrine of the single price long practised in largest part, from necessity (a separate haggle with more than one customer at a time being impossible), by two of the three stages of selling, viz: Retail and auction or stock exchange selling, but always much evaded by the stage to which the trusts chiefly belong, i. e., wholesaling and jobbing. Many states have passed single-price penal laws embodying the principle of this rule, though adding—erroneously—the element of “intent” to monopolize or the “effect” of monopoly. Though one such statute has been upheld by the United States Supreme Court (*Central Lumber Company v. South Dakota*, 226 U. S. 157) all have brought little relief and none admits of much. The reason is simple but twofold. The rule incompletely covers the field. Evasion of only such single rule is easy: The seller has only to vary the grade or slightly alter the specifications to sell practically the same article, without breaking the law, at a different price.

“Intent” or “effect,” added to the rule, also greatly clogs it. It then becomes as specious as unscientific. “Intent” and “effect” are hard to prove. None can tell how much potential competition is being eliminated even if no actual competition appears to be struck down. Potential competition, here referred to, is competition not then competing but ready to do so in the absence of danger of unfair tactics. Much damage may therefore be done when no bad intent or evil effect can be proved. Evil “intent” or “effect” is not essential in a criminal statute. None is allowed to discharge a loaded gun in a crowded city street though he intend, and effect, no evil. It is enough that such an act *may* injure if unchecked. Firing a gun under such circumstances therefore, while not murder, is a crime. As the rule first given, alone, can be

*Coffee dealer injured by
sugar chokes withing or which in
selling coffee.*

evaded a second and supplementary rule becomes necessary to cover the field completely.

2. *Different grades of the same thing, or different things, if sold by the same seller at the same time, must be sold at prices reasonably similarly proportionate, commercially, to their respective values.*

Under this rule a sugar monopolist will not be able to embark in the coffee business and injure coffee competitors by selling coffee below cost while recouping the loss from buyers of sugar—until the sugar monopoly becomes also a coffee monopoly when the loss can be again recouped from consumers of coffee. If coffee be sold below cost by the seller of sugar, sugar must also be so sold at the same time. Danger of self-bleeding will here again automatically prevent such unfair competition by mere brute strength of superior capital.

Whether two prices are reasonably similarly proportionate, commercially, to respective values will be decided, when challenged, under the present well-settled rules of criminal procedure by an impartial jury. This will be merely to decide whether, under all the circumstances, the two prices are equally fair. Juries every day decide the harder question whether certain conduct is negligent and the infinitely harder question whether certain acts were committed with innocent or criminal intent. “Commercially” will not mean “arithmetically.” The question will be: What prices would a reasonable man fix? The answer will be given in each case, as it should be, by a jury satisfactory to the defendant and according to the law instead of by a court acting as a jury, and the same jury in each case, though unsatisfactory to the defendant, according to a law unto itself though self-termed the “rule of reason.”

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High class retailers have received much praise for following the first rule. They would be entitled to even more for following the second. It is of much advantage to customers inexperienced in values to have a store give one price.

As it must reckon that some of its customers will know values, its single price must then be reasonable at least in the lines of which it wishes to dispose largely. This will not prevent an unreasonable single price in other lines. There it may prefer excessive profit from the unwary attracted by its main lines. Some stores even promote "sales" for this very purpose. The practice is akin to that of the gold brick game. Were these stores obliged to obey this second rule the most inexpert customer would be as safe in buying one article as another, however great his unfamiliarity with its value. The protection he now has in lines where the store appeals to the expert he would then have in all lines. In giving him this protection the store is held only to a correct standard of justice and the same standard it is now partially giving in its own interest.

Self interest is still so short sighted that few retailers are yet high class enough to spread their highest standard of justice over their entire trade. Were this standard imposed it is evident that the department store would be unable to crowd out the small dealer except by general efficiency, i. e., over its entire field. It is against the public interest to have him crowded out by one more inefficient than himself in his own field but with more capital. Under these rules pre-eminence through terrorizing competition with the power of money, i. e., scalping first in one field and then another, will be impossible. This is not general but monopolistic efficiency and merely means higher prices for the public in the end. Many manufacturers, even, complain that this department store monopolistic efficiency injures their trade and the public by destroying their selling organization, i. e., small dealers who supply the public regularly and widely. The remedy of the manufacturers, now brought to naught by the Supreme Court, was to fix by contract the retail selling price for all. This plan had great possibilities for evil. It merely transferred monopolistic power from the large seller to the manufacturer. It is better to eliminate the evil than to transfer

it. No department store will injure the business of a small dealer in safety razors, for instance, by selling them below cost if it must at the same time sell everything below cost. These manufacturers now complain that druggists and others will not carry their products if exposed to such "scalping" competition. These penal rules, it is obvious, will remove this danger without giving monopolistic power to anyone.

The case which denied to manufacturers and producers this monopolistic power to fix by contract the prices at which retailers should sell was *Dr. Miles Medicine Company v. Park*,¹ and the ground taken was restraint of trade. Mr. Justice Holmes dissented, saying: "I cannot believe that in the long run the public will profit by this court permitting knaves to cut reasonable prices for some ulterior purpose of their own and thus to impair, if not to destroy, the production and sale of articles which it is assumed to be desirable that the public should be able to get. . . . The analogy relied upon to establish that evil effect is that of combinations in restraint of trade. I believe that we have some superstitions on that head, as I have said; but those combinations are entered into with intent to exclude others from a business naturally open to them, and we unhappily have become familiar with the methods by which they are carried out. I venture to say that there is no likeness between them and this case."

An eminent Boston lawyer-economist has since expanded the idea that such contracts are salutary and at least an exception to the general rule in that their restraint is reasonable and in the public interest. He reasons that as producers can establish sales agencies of their own to sell at a fixed price the public is not injured by having retailers contractually bound to do so. Upon that point Mr. Justice Holmes with delicate sarcasm had said: "If it (the plaintiff) should make the retail dealers also agents in law as well as in name and retain the title until

the goods left their hands I cannot conceive that even the present enthusiasm for regulating the prices to be charged by other people would deny that the owner was acting within his rights. It seems to me that this consideration by itself ought to give us pause. . . . What then is the ground upon which we interfere in the present case? Of course, it is not the interest of the producer. No one, I judge, cares for that. It hardly can be the interest of subordinate vendors, as there seems to be no particular reason for preferring them to the originator and first vendor of the product." Interesting is it to note one of the oldest and most conservative of our judges on common ground with the most radical of regulators—and from the same error in respect to "subordinate vendors." Lord Coke early said of general restraint upon alienation, as cited by Mr. Justice Hughes in his prevailing opinion, that "it is against trade and traffic and bargaining and contracting between man and man."² The detailed economic process by which monopolistic power in the producer injuriously works "against trade and traffic" was not explained by Lord Coke or elucidated by Mr. Justice Hughes. In default thereof, the keen, conservative mind of Mr. Justice Holmes,—not "fossilized" but plainly harking back with pleasure to an era when "rights" of property were in the "owner" without regard to "other people," when property rights had been so long called "sacred" that they were deemed to pertain to religion rather than to be derived from, and for, the common good,—placed sound doctrine among "superstitions."

Producers' sales agencies and price contracts with retailers work an opposite effect. The former tie up the capital of the producers, the latter that of the retailers. The difference is vast and explains why such contracts are "against trade and traffic and bargaining and contracting between man and man." The contract-retailer would be no worse off, at any particular time, if his prices were

² Coke on Littleton, § 360.

fixed by law. Sales agencies can reduce prices by breaking, not a contract, but only a policy. If this process of tying up retailers by contract were legalized, doubtless it would be greatly extended. Every grocery store is now mostly filled with trade-marked and packaged goods which most easily lend themselves to such a system. Many retailers might come to sell no article not so fixed as to its selling price in their hands. Retail trade would lose that freedom and flexibility which it needs. It would become largely ossified in one unyielding mass. Such a retailer, overstocked and in need of ready cash, would be unable to raise money by lowering prices slightly as he might otherwise—it is fair to assume—easily do. Perhaps with many of his fellow retailers he would then fail because their business had become unworkable. The producers would soon have only causes of action against bankrupt retailers for breach of contract. Auction purchasers would have the goods—which they would then be at liberty to sell free of price-contract restrictions. The producers would then be even more embarrassed by price cutting than at present. The embarrassment of retailers, the unworkableness which would have been introduced into business, were well avoided by the Supreme Court even in partial reliance upon Coke's "superstitions." Retailers are themselves a large section of the public. When to the evil of their restraint are added the general evils which would surely follow, both for producers and consumers, it is clear that producers' price-fixing contracts would be neither salutary nor otherwise than perilous to the public interest if made an exception to the rule against restraint of trade. The argument against them rests on something more substantial than superstition. Competition of retailers in civilized commercialism—under rules of equality—will work only for economy and the public good as department stores, however knavish, will not find it to their interest to sell at a loss in every line. They will not then be able to run a losing leader or "misleader" without so doing.

Yet the "knaves" at present perpetrate a serious evil. It has been outlined here. Others have dwelt upon it elsewhere. To remove that evil it is unnecessary to remove in the slightest degree our present restriction against restraint of trade. The "knaves" need only to be held to the rule "Equality for all"—the basic principle of civilized commercialism. Holding them to properly proportionate prices in different lines of goods is not an interference with the free flexibility of business. No price is fixed for them. Their prices can still flex ad libitum, provided they flex the same for all. Liberty which is not the same for all is not liberty at all. It is only license for some, oppression for most. Only by the progressive elimination of such oppression has true liberty ever increased. True progress against the evils of cut-throat competition can only be made by keeping all the ground the common law has long well won—and winning some more. The common law believed in keeping competition open—in a strict sense it has kept it open—but it did not advance with its subject sufficiently fast to see that it was kept open to all on equal terms. The absence of equal terms, not the presence of competition, produced the evils which our generation can have the honor, as it has the need, of eliminating by adding to open competition equality of terms.

It must of course be conceded that more liberty for most will mean less liberty for those few who formerly used license. This will not, properly speaking, restrict their liberty but only restrain them from oppressing. Under the first penal rule it is evident that when a seller has placed stocks of goods in two different places he may at times wish to reduce his stock only at one place and so desire to cut his prices only at that place. Yet if the power to oppress is to be taken from him he must be compelled to reduce at all places when he reduces at one. Men who sell at more than one place must be held to a sufficiently high standard of ability or far-sightedness not to

overstock more at one place than at another or themselves stand the consequences. To do otherwise, besides allowing opportunity for oppression, is to put a premium on partial over-production and partial over-production is a prime cause of panics and hard times. As deficit financing for public bodies is now well recognized as the better policy, so in time will deficit production for most producers. It is much better for the public as it is for both producers and dealers to have both of the latter underestimate rather than overplunge their markets.

Under the second penal rule of course one who is selling several different lines of goods at one place may at times find himself overstocked only in one line and wish to reduce the price of that line only. He who engages so extensively in business must use coextensive care unfairly to injure no one. He must also be held to a sufficiently high standard of business ability to avoid such overstocking or himself stand the consequences. Anyone who could grow large only by breaking the first and second penal rules will confer a greater benefit on the country by staying small. The first consideration will be, not that he does a large business, but that he does no unfair injury—even to a "little fellow." Though the fall of the "little fellow" be no more important than that of a sparrow he is entitled, under a system of business equality, to full protection. With equality before the law protection of the individual from assault, for instance, depends, not on his importance, but only on the fact that he is an individual. Facts had best be faced. There are only two courses open in dealing with monopoly. (a) The rules can be framed to protect the "little fellow." (b) The rules can be framed not to protect the "little fellow." This is the system of *Caveat Emptor* we are now using. It is a barbaric commercialism and only a system which protects the "little fellow" can deserve to be termed civilized. By *Caveat Emptor*, too,—as uneconomic as immoral,—guile is

given success which civilized commercialism will grant only to service. (c) The rules can be framed ostensibly to protect, but without protecting, the "little fellow." This can be brought about in various ways. Provisions that the big fellow can do anything to the "little fellow" that he likes provided he does it with "intent" to help himself and not to hurt the "little fellow" will answer, as will an "effect" provision previously mentioned. Practically, so far as any protection or possibility of efficient enforcement goes, this third course is the same as the second. Power to dissolve combinations, as under the Sherman law, does not help it. While the combinations are combining the "little fellow" is not protected. When they are dissolved the process begins again. While they are being dissolved all business is injured—including the "little fellow's"—because it has by that time come to be done upon a monopolistic basis. "Little fellows" are then scarce even if still existent. Protection of the "little fellow" means constant protection of all "little fellows" from oppression,—including the littlest "little fellow,"—not merely of those few who may happen to survive a given period or a given amount of monopoly or oppression. It is our failure to face facts—our well known Anglo-Saxon and Puritanical disinclination to call a spade a spade—that has prevented sighting the proper course and taking it. We have attempted to have our cake and eat it too. Economists in general say that the remedy for the trust situation is not yet plain. Professor Taussig of Harvard in his "Principles of Economics" (1911) says:

"The truth is that we do not know just where we stand in the matter of trusts and combinations. We do not know how far the trend to monopoly is inevitable, nor do we know how far legislation is now called for or what further legislation may be called for in the future. This rapid, yeasty, portentous growth is baffling to the investigator not less than to the legislator. We must await the march of events, confident perhaps that the knell of private industry has not yet been sounded, but convinced already that the economic problems of the future will be increasingly vast and complex." (Vol. II, pp. 441-2.)

The cause of this attitude is, largely, that our economists and statesmen have not yet admitted to themselves the true situation—always a necessary preliminary to the adoption of any remedy to fit it. If there is a desire to protect the "little fellow" he can be protected but we cannot protect him and at the same time leave him at the mercy of the trusts. If we decide that it is best to sacrifice the "little fellow" to the interest of the big fellow then our course should be the one followed in Germany. We should not break up the trusts after they have come to do the business of the country—when by breaking them we break up all business. We should frankly affirm that monopoly is a good thing and that the state should nurse it, regulate it and, if necessary, run it in order to get out of it the best it has in it. We should—as we have not—decide which we wish to do before doing anything—and then do it. If monopoly is a good thing it should never be broken up by Sherman law enforcement. Anyone who achieves monopoly, by whatever means, should thenceforth be regarded as a benefactor—and treated as a natural monopolist. We can do one thing or the other but we cannot at the same time have the "little fellow" protected and unprotected. If private, unfair monopoly is a bad thing we should so protect the "little fellow" that a monopoly will not only never need to be dissolved but will never get an unfair start. We must "disturb business" once for all in order to set it free. As business at present in some fashion stands a constant disturbance it should be content to be disturbed but once in order to be ever afterwards undisturbed by law. It will then be rid of some of its traditional timidity. Of course if we protect the "little fellow" there will be many more "little fellows" and fewer trusts than at present because most trusts doubtless exist or have built themselves up by unfair competition. We cannot maintain everything upon the present scale exactly as it now is and still have the "little fellow" protected. It is the desire to do just this thing and the fear to do

anything else that has in the past obfuscated our economists and statesmen. It is now time to choose frankly between the horns of the dilemma. To that end it is necessary to decide whether the country will be better off by accumulating wealth as fast as possible for the few or by accumulating wealth, even though by a slower process, for as many as possible though each in the same time may accumulate much less under latter than any of the few under former conditions and even the total be somewhat less, though that is hardly probable. The Supreme Court once, at least, had no doubt on the subject. In the *Trans-Missouri case*,² per Mr. Justice Peckham, it said:

"Trade or commerce under those circumstances (trust conditions) may nevertheless be badly and unfortunately restrained by driving out of business the small dealers and worthy men whose lives have been spent therein, and who might be unable to readjust themselves to their altered surroundings. Mere reduction in the price of the commodity dealt in might be dearly paid for by the ruin of such a class, and the absorption of control over one commodity by an all-powerful combination of capital."

After noting that change from stage coaches and canal boats to railroads, and from hand labor to machinery, meant ruin,—unfortunate but necessary,—to some, the Court continued:

"It is wholly different, however, when such changes are effected by combinations of capital, whose purpose in combining is to control the production or manufacture of any particular article in the market, and by such control dictate the price at which the article shall be sold, the effect being to drive out of business all the small dealers in the commodity and to render the public subject to the decision of the combination as to what price shall be paid for the article. In this light it is not material that the price of an article may be lowered. It is in the power of the combination to raise it, and the result in any event is unfortunate for the country by depriving it of the services of a large number of small but independent dealers who were familiar with the business and who had spent their lives in it, and who supported themselves and their families from the small profits realized therein. Whether they be able to find other avenues to earn their livelihood is not so material, because it is not for the real prosperity of any country that such changes should occur which result in transferring an independent business man, the head of his establishment, small though it might be, into a mere servant or agent of a corporation for selling the commodities which he once manufactured or dealt in, having no voice in shaping the business policy of the company and bound to obey orders issued by others. Nor is it for the substantial interests of the country that any one commodity should be within the sole power and subject to the sole will of one powerful combination of capital" (pp. 323-4).

² 166 U. S. 290.

The advantages of a slower and more even development by which we might possibly find out how to use our wealth by the time we acquire it must be set off against the advantages of much wealth for the few and much right now. A European country surrounded by armed camps possibly might have to choose the latter alternative in order to have any chance at all to continue its independent existence, slight as the chance would be, as history shows, to continue that existence through the descendants of its present upper and middle classes. This country is under no such compulsion. Here upon a virgin continent, in no danger of invasion from abroad, we have a perfect chance to develop naturally, fully and without appreciable race suicide. The manner in which race suicide enters the problem will be touched upon, although altogether too inadequately, hereafter. Suffice it to say here that with the beginnings of monopoly begins race suicide. In ancient Rome the land was monopolized. Present monopoly here, if it keeps on extending, will also in time include the land. Race suicide is not waiting for the latter result. No more did it in Rome. The effect there is set forth in the pages of all Roman historians. Gibbon says:

"The lands of Italy, which had been originally divided among the families of free and indigent proprietors, were insensibly purchased or usurped by the avarice of the nobles; and in the age which preceded the fall of the republic, it was computed that only two thousand citizens were possessed of any independent substance" (*Decline and Fall*, III., 380).

"In the time of Jerome and Claudian, the senators unanimously yielded the pre-eminence to the Anician line, and a slight view of their history will serve to appreciate the rank and antiquity of the noble families which contended only for the second place. During the five first ages of the city, the name of the Anicians was unknown" (*Id.*, III., 386).

A system which will put a premium on small businesses can be adopted and it will be the system most favorable for most but it will not be the system under which some will still have the same chance to pile up large fortunes that they have at present. Some gentlemen eminent in finance have stated that without the trusts the country would have lost the last twenty-five years of its develop-

ment. Yet the trusts did not create the contents of the mines or produce the crops. These banker-promoters have "organized" some hundreds of combinations which, so long as they go on selling their products to each other or the public at prices constantly increasing above the constantly increasing cost of monopolistic manufacture, will show a profit. Some of this increased cost may seem unnecessary but it is inherent in human nature as at present constituted. The same men control, but are careful not to own, most of the combinations. They buy and sell practically from and to themselves. Big business has developed much faster than the moral standards of its controllers. Had the development been slower their honesty might have kept better pace with it. A milking process is constantly going on behind the scenes and for the milk in the shape of over-high salaries, underwriting and other commissions, rake-offs and other graft, is constantly substituted the water of higher prices. Our business morals are such that few presidents can protect their properties for \$75,000 a year when \$7,500,000 can be made from subsidiary and construction companies. The strain seems to be nearest the breaking point, as should be expected, with those which cannot raise their rates: The railroads. If the process keeps on, whether or not rates are raised, the strain of the increased cost of living will break the public. When the public is unable longer to pay increasing prices—and cuts down its buying—these combinations will be unable longer to pay them to each other. We may then see a debacle which will make certain gentlemen wonder whether, instead of advancing the country, they did not set it back twenty-five years. Whether or not they have advanced the country, has not yet been put to the acid test of time and experience. In the absence of its hall mark upon present trust progress, it is still arguable that most haste is made by making haste slowly. And at what a cost in little fellows has their vaunted progress already been made!

Some may fear that prosecutions will be too numerous and persecutions too frequent when every sale, under the second penal rule, can be made the basis of a criminal complaint. Any such fear will be unfounded. Every jostle upon the street can now be made the subject of a complaint for assault and battery. Yet such prosecutions are rare and persecution therefrom unknown. The right is there, and it needs to be there, to lessen jostling in general by bringing the flagrant cases into court. The others do not come,—partly because of the common sense of the jostled and partly because of the common sense of magistrates, district attorneys, petit and grand juries. The slightly jostled know that any attempt to prosecute a trivial, though technical, injury will meet neither sympathy nor success. It will be the same with selling. Only the flagrant cases will be complained of in court but unfair selling uncomplained of will be much lessened. This lessening will greatly increase as public sentiment gradually marks down the unfair seller as "unsocial" and injurious to society. Gradually, also, with increase of social vision and social conscience, cases will become flagrant which formerly would not have been so deemed. Social ostracism has been previously suggested as a remedy, but previous to civilized commercialism any rule by which to ostracize remained unsupplied.

Reverting to the question of contract-retailers and sales agencies it is plain that it will be immaterial in civilized commercialism, so far as other retailers are concerned, whether or not producers find some to make these price contracts. The present advantage to producers would be that, as they have the right to withhold selling to any, they would sell to none except those retailers who would sign price contracts. In civilized commercialism they will lack such power to refuse to sell. Under the penal rule we shall next set forth producers will be obliged to sell to all at the price they sell to any. After the producer had made one contract it would therefore be hardly possible

to compel any more retailers to enter into it and its seems hardly likely that producers under such circumstances would attempt to use such contracts. They will not then have the right to withhold an article from anyone who wishes to buy it at the price given some one else at the same time. Thus by one rule all the ground here gained by the common law is held and more is taken. Such contracts will of course still be invalid as in restraint of trade but if they were valid it would not seem that producers would, as a practical matter, have any power to induce anyone to make them.

3. *Each seller must allow all who wish to be his customers for cash.*

What is sold to one must be refused to none. This rule will eliminate the evil in "factors' agreements," "tying" agreements and like devices. Each article sold to a "factor," or in a "tied" agreement, must be sold at the same price as to the "factor" or the "tied" to all who apply with the cash. Minor regulations to prevent such minor evil as may still be worked through discrimination in credit among the equally responsible need not be here detailed. Just as political equality is but a corollary of moral equality, so this rule, which completes business equality, is but a corollary of political equality. Political equality was only demonstrated from its corollary by 1789 years of mankind's toil, tears and blood. The truth was simple. Yet trepanning of the world of privilege by the great major operation of the French Revolution proved a necessary prerequisite to its full understanding that the Fatherhood of God implies the brotherhood of man. Even then—and ever since, so dense is privilege—only political equality was seen to follow from that brotherhood. Yet business equality is there linked inextricably.

Caveat Emptor has hindered some but the world has been mostly prevented from seeing this by its fear of social equality. Social equality does not follow from political or business equality. The world's instinctive fear here is

justified. None may claim social equality as a right who renders not the equal *quid pro quo*. Socially none can render it. In business all may do so. Political and business equality are matters of individual opportunity. None can possess the right to limit another's opportunity by forcing him behind. Each has an equal right to try to go ahead. Social equality is a matter of personal association. Until all men are angels of light, each will be unequal for purposes of personal association. Only when each man equals his Image can each justly demand equal association with all. Until that glad time, each will be equally entitled—on principles of equality and justice—to choose among his brothers those associates he prefers—if they happen also to prefer him. Otherwise not. He is then entitled only to the associates he can get.

The reason is that all men differ. To force one upon another, socially, is to wrong one and favor the other. As each differs in unequal degree from the Ideal, that would be to give one of them something for nothing. Until every man by becoming perfect equals his Image none can give to another, socially, an equal *quid pro quo*. Whatever two human beings in the entire world are selected, in association one will give, socially, too little and the other too much. As such social unfairness is thus at present necessary, social association must still be left to personal choice. The law cannot properly assume to equalize a field Nature has left unequal and placed beyond its power. Such social unfairness, when accepted, is now and must remain a matter of favor, not of right. Under the principle of equal justice only rights can be secured through law. Otherwise the law, by giving special privilege to some, becomes in time the curse of all. But the law can declare, what is the fact, that the element of social association in business association is negligible.

Business association between seller and buyer is a different matter from social association. In effect it is the dollar, not the buyer, that comes to purchase. Any dollar,

for a dollar's worth, renders an equal *quid pro quo*. The seller does business to exchange dollars worths for dollars, not his own society for the society of others. While the seller may refuse any buyer as a table guest, he may not justly refuse anyone as a buyer who brings a dollar. As no buyer comes as a table guest to purchase, but only as a buyer, he cannot be justly refused on the ground of bad table manners provided his money is good. The dollar of the black man is as white and pure as the dollar of the white man. The dollar of the illiterate is as learned as the dollar of the college bred. The dollar of the dwarf is as heavy as the dollar of the giant. The dollar of the most uncouth is as current as the dollar of the most refined. This is necessarily so for each bears the stamp of the same mint. In the case of dollars, each equals the ideal. As to his dollars each is therefore entitled to equal treatment without discrimination. This the seller is never entitled to withhold, however innocent the "intent" or however lacking the "effect" of monopoly. Too long have most looked only at the indirect and minor wrong to the "little fellow." Wrong to small competitors is important. But the ease and frequency with which it is noted cause many to look no farther before doing something. Hence "intent" and "effect" of monopoly in single price statutes. The first and major wrong in the process is *direct* oppression of buyers, without which *indirect* oppression of sellers is impossible. This first and major wrong denies to some that business equality which is the right of all. This equal right of all to buy on equal terms is most important and should be looked at most. Equality due as a right the law is entitled—and by the principle of equal justice required—to compel. The seller is not injured. He is in business only for the purpose of selling goods. It can make no proper difference to him to whom he sells, provided he receives in exchange good money. Whose money he receives is immaterial. If he prefers to say he is in business to make money, it is equally true that it can make no proper

difference to him from whom he makes it. As a seller's discriminating among buyers injures some of them and cannot properly help him, he is not justly entitled to the privilege, and should not longer have the power, to injure by discrimination. Gain from such source he never received by right and should not longer retain by favor.

If it be said that this applies to all sellers some of the rules commonly applied to public service corporations, the answer is that all citizens are subject to those rules to the extent necessary to prevent injury to the public. As all are buyers, the buyers' cause is the cause of all. Injury to "little fellows" is reason enough for the rules but a better reason is monopoly's injury to all. By the three rules of what is here termed civilized commercialism, as distinguished from the present monopolistic or barbaric commercialism, no one is compelled to enter or remain in business nor is any price fixed for him. His price can be freely changed at any time if changed for all. He is merely held to the equality of a business republic. He is not allowed to give equal citizens unequal treatment. The absence of equal treatment for all results—directly, indirectly and finally—in great injury to the common good. To prevent that result, in the interest of all, equal and necessary regulation is not only proper but constitutional. Whether civilized commercialism, however, is constitutional is less important than whether it is right. The right solution of monopoly, once understood, will soon enough be constitutional.

In *Munn v. Chicago*,^{*} the United States Supreme Court upheld an act fixing the charges of private owners of Chicago grain elevators on the ground that they constituted a "virtual monopoly." Occupying the lake front as they did, they were in the class of natural monopolies. The Court thus upheld a regulation, not only that the price should be equal for all, but itself fixing that equal price. While this case arose under the police power, Congress has

^{*} 94 U. S. 113.

equal power over commerce so far as it is interstate. Civilized commercialism does not need to go so far. It will not be necessary, and it would not be economic or expedient, to fix prices for any but natural monopolies. Few, if any, commercial industries are now natural monopolies. The equal regulations of civilized commercialism will deal effectively with those which only keep themselves monopolies by unfair competition, actual or feared.

Assume that someone with \$100,000 starts today a small oil refinery or steel mill in a remote corner of the country. To eliminate the newcomer it will be only necessary for the big trust to lower prices below cost in that limited territory until the \$100,000 is consumed in profitless running expenses. The small concern cannot survive merely because it can supply that corner more efficiently than the trust, viz: At a less price and more profit. Under civilized commercialism, it is obvious that it will succeed in doing so. Probably a great deal of such efficient (potential) competition now fears to intrude. Under civilized commercialism, conditions will not confer upon the trust the privilege to crush the "little fellow." All buyers will have an equal right to buy on equal terms. Monopoly will be deprived of its clubs and forced to earn its bread by the sweat of its brow.

Assume that the small and more efficient refinery or steel mill starts under civilized commercialism. The large trust, if it does not split, will lose the trade of that field. It cannot afford to reduce its price over the entire country sufficiently to hold that corner. If it does, it will die. If it does not, it will no longer be a monopoly. Accordingly it will split itself in its own interest if it has even one small plant which can compete on fairly even terms with the newcomer. Necessity, not suit in equity, will compel that split. Thus competition will be introduced. It will all be of public benefit as it will all be fair competition—the competition of efficiency. The only monopoly

which will survive in civilized commercialism will be beneficent monopoly—monopoly at low prices and at lower prices than anyone else can anywhere produce. Let none fear that competition of efficiency will result in slaughter of the efficient. Two small retail stores, in the same line, often successfully exist now side by side. Neither tries to kill off the other by selling below cost. The danger is too great, when it must be incurred over the whole field, and the result—even if the killing is successful—too uncertain for the killer. "Live and let live" will also be the motto of the trusts when they are exposed to the same danger. The first law of Nature has equal force with large and small. Any business which starts small in civilized commercialism will only become large by efficiency in fair competition. If by such it becomes a monopoly it becomes a blessing.

Monopoly, it is seen, comes from seed unlike the fabled dragon's teeth because capable of double fruitage. It is governed by the soil. Only when planted in barbaric commercialism does it grow the baneful octopus. In civilized no fairer blossom blesses. As with other natural forces, man has only to learn to use monopoly to use it without self-injury. He has only himself to blame for using baneful soil. In barbaric commercialism the secondary evils of monopoly are even greater than the primary. They are sloth and, in part, race suicide. Monopoly as the law of sloth is now well understood. Its influence upon race suicide is less perceived. It is the strongest and most rapid contributor towards placing all wealth in the hands of the few. With this process starts race suicide strictly according to Malthus. As soon as a small, rich class, much exceeding the middle class in prestige, exists in any state many who in wealth are immediately below the richest, wishing to associate with them upon equal terms, vie with them in display. They cannot keep up and have children. Consequently they keep up without them. Many in each class below aspire to a class above—as far above as can be financially reached

without the financial handicap of children. The lack of children is soon counted no disgrace. All count it a disgrace to descend in the social scale, now measured by money. Public sentiment against having children, aided by the frivolity and idle lives of many of those without them—and much increased by their absence,—is soon so strong that it somewhat affects even the rich class at the top. They also cut down children—without having to do so and without knowing why except to have a better time by doing as other people do.

Only the poorer classes, without social ambitions, exert no social voluntary check. Those above—below the richest—who are ambitious all exert it at their respective breadlines, as Malthus wrote that any people would—or suffer the positive checks. Their breadlines are the standards of the classes above to which they aspire. To fall below those standards of expenditure is for them to suffer the positive check of social ignominy and disgrace. That they struggle harder to avoid than the poorest to escape starvation. Most of our people are ambitious, especially our native born. The voluntary check of race suicide is accordingly exerted by them most eagerly. Men always act from motive. Threatened loss of social standing is, for the ambitious, one of the most powerful. By noting that this motive has been substituted in the lives of most for that of threatened starvation in Malthus' book, we can watch his theory in full operation all about us.

But bad as are the evils of barbaric commercialism, doubtless some standpatter economist will say he perceives a worse in civilized. Competition, according to him, owing to freight cost will exist only inside small, separate zones. The spur of possible nation-wide competition will be lost—to the detriment of progress. It would seem a sufficient answer to point out that under barbaric commercialism nation-wide competition is not long possible.

We prefer to meet the critic, however, upon his own ground. It is at once evident that his small zones will overlap with others on their farther sides. If they do not do so at first, midway and overlapping producers will start whenever they can do so at a profit. Unfair competition will not be feared and the chief present motives for dividing territory by agreement will be wanting. Price fixing agreements between competitors will also then be absent. With unfair competition eliminated such agreements will be without appeal to the efficient and, without the efficient, without utility to the inefficient. Each producer in every zone the country over must sell everywhere at one price *f. o. b.*, whatever the zone of his customer. To get any trade in any part where anyone competes he must therefore meet competition. This competition must in turn meet other competitors farther away and the desired nation-wide competition would seem to be passed on as by the row of bricks in the books on economics. Furthermore, freight on many small or light articles is negligible. It is computed in McPherson's "Railroad Freight Rates" that a dozen clothes pins travel upwards of five hundred miles for five ten-thousandths of a cent.

Wide competition, other than through the brick system, will exist in civilized commercialism under the present "blanket" system of railroad freight rates. In civilized commercialism this system will naturally be much extended, though it is extensive now, as it is complementary to it. By the "blanket" system the country is divided into districts in which all stations receive the same rates from producing centers or other districts. The country is now full of "common points." Texas is one district for long-haul traffic, New England another. On westbound trans-continental shipments the region east of Chicago is treated as a unit. The railroads in civilized commercialism, as now, subject to the Interstate Commerce Commission will fix these districts for all, not each seller for himself. The

districts will differ, as do freights, for different commodities. For some the entire country will have few districts. Thus wide competition will never be absent.

As in civilized commercialism only nation-wide superior efficiency will retain or achieve monopoly, there will be many more small businesses than at present. This will be an unmixed good. There will be many more employers and fewer employees. Wealth will not gravitate in the same degree or with the same rapidity into the hands of the few. Wealth itself will be more respected and less envied when it is more often seen to follow only service. General prosperity will be better, because more widely distributed. Fewer will be very rich and more will be fairly well-to-do. Hence there will exist a larger middle class, as distinguished from the very rich and very poor. Its prestige will be higher. Its influence in setting the general standard of living will be correspondingly greater. It will not then, in the opinion of so many, be necessary to live like the rich or live a nonentity. Hence less envy of the very rich and less apeing them. Hence less tendency toward race suicide. The rich themselves, if the middle class be large enough—and in civilized commercialism it will constantly be larger,—will be constrained by public sentiment to conform to the general social pace instead of setting it. It is with deep significance that Aristotle, as Professor Mahaffy of Dublin University recalls, in describing his ideal as "a small, well-ordered state, governed in the interest of the majority of the citizens by good laws and humane rules, makes it his *sine qua non* that the middle class shall outweigh in public importance both the wealthy and the indigent." It is necessary for them to continue to do so in a free republic or the republic will not long continue free. Once the very rich and very poor preponderate, there will be victory to the power of money or the power of might. Civilized commercialism will mean that people will advance in wealth more equally than they

have under barbaric. Our many great contrasts were as unnecessary as, often, undeserved. It is only by advancing, in the main, equally that a state's middle class can be preserved and the state itself thereby maintained.

The error, as a solution, of the Sherman law's suit in equity has been shown. Dissolving combinations eliminates not only their evil but their good. It also, at best, merely leaves the way open for the natural result of unregulated competition to repeat itself. The public is but bound again upon the wheel to make again its ceaseless round. On the other hand, that government control advocated with the best intentions by some, self-supposedly most progressive, is in reality merely Bismarckian state socialism. It is a move backward, not forward. It would hold in order many smaller despots by means of a larger, central despot. This was the method of the Continent in erecting kings to control the barons. It brought, and will bring, its own new evils. The method of Liberty is different. It erects all the people to control all despotism—by a government of laws, not men. The difference between controlling the trusts through government officials or commissions and controlling trust officers through penal rules is the difference, in principle, between the despotic bureaucracy and the free republic. Shall a progressive people which has achieved the latter in the political field turn back to the former in the business field?

To do so will be to admit final intellectual impotence— inability to discern the regulations equally necessary to further progress and prevent retrogression. Political freedom and business despotism cannot long coexist. They are antipathetic. Business upon the present scale will either co-ordinate, or be co-ordinated by, the state. Both must become free or both will become despotic. To maintain freedom in the political world it is necessary to extend liberty and equality to the business world. The

penal method of extension proposed is the one longest approved in English law. Natural persons will be prohibited from selling or assisting in selling except according to the rules proposed. Those who, however indirectly, direct or assist corporations in thus injuring the public will infract the penal code but corporations will go free.

Whether corporation clerk or corporation controller, the individual taking part in a sale on the corporation's behalf will be regarded equally with it, as to that sale, a seller. One who directs or abets two or more corporations in selling the same article at different prices at the same time, for instance, will thus offend though each corporation obey all rules. Holding companies and individual holders of several companies will thus become alike innocuous, so far as selling to the public is concerned, if individual controllers obey the penal law. Holding companies will remain pregnant with harm for minority stockholders but the evils of monopoly are other than internal corporate ills. Persons who organize, own or run a "cutting" or "fighting" corporation to enable one of their number to sell, for instance, or to have some selling done, at a lower price in a limited field without lowering his higher general price will equally infringe the rules though none be broken by any corporation or by the personal act of any one person. All such persons will be conspirators in crime. The act of each will be the act of all, the acts of all will be the acts of each. All will be responsible for any crime committed though each perform but a part in itself innocent. All who in any way knowingly aid or abet discriminatory selling, whether for themselves or others, will share equally in the guilt. Though bringing new freedom of competition because linked with true equality of business opportunity, civilized commercialism will take no voting power from stock, no stock from any owner, no corporation from any combination—and punish no stockholder not a criminal. It will peer into no man's private

business nor will it attempt to run it for him. Every man, simply, must comply with the law at his peril. Individuals and doubtless corporations, if interested individuals insist, will make necessary readjustments to enable individuals to clear the criminal law but neither the government, the law, the public nor the courts will be longer troubled with the unnecessary, gratuitous and expensive work of readjusting corporations which may happen to need or wish to readjust themselves.

The principle of civilized commercialism, properly applied, will obviate oppression by buyers as well as by sellers. Some trusts have risen to supremacy because, buying from many small producers over a wide field, they were able gradually to eliminate local buyers by temporarily offering higher prices, though at a loss to themselves, in places where there was competition. It has been charged that the Beef Trust in this way destroyed all local slaughter houses and from independent business men turned local butchers into its own clerks. Large creameries, buying over a wide territory, have been known thus to force to the wall smaller, local concerns. Similar "intent" single-price buying statutes have been enacted but with similar defects. Civilized commercialism, by forcing all such buyers to give sellers equal treatment, will likewise meet this evil by substituting, in the buying as in the selling field, business liberty and equality for business oppression. Civilized commercialism by a process normal as natural, simple as scientific, by eliminating unfair competition proposes to regulate business despotism into a business republic.

Man is everywhere in economic chains today because, in commercial competition, he has not emerged from barbarism. Though even war has been regulated, the regulation of business competition is not yet among the no less renowned victories of peace. The wild tribes who chattered with the soldiers of Alexander on the confines of the world

used the same system of business competition which is followed today by the largest trusts. They used it better only as they used it less. Methods of war have been improved beyond the great world-conqueror's dream. Business competition is still abreast only with his progress in the art of war. He only longed for another world to conquer. Business competition has conquered it together with his own. It is therefore not surprising that business competition is now often likened to war by those who wage it. It is like war—after the older fashion—before the Red Cross. Worse, it is like civil war. True, its bullets do not directly kill. They only strip. The barbarian was often kinder in killing before stripping instead of after.

That the conditions and results of our defective system of distribution both demand and require some relief is proved alike by the platform of the Progressive party, the growing popularity of Socialism and the profound reflections of philosophers. Economists have been long unanimous that, much as modern times have improved production and consumption, in the department of distribution most remains to be improved. A great political philosopher has said that the troubles of government, concerning property, come not from human greed and envy but from unfair, human schemes of distribution. The most distinguished scientist of recent years, Dr. Alfred Russel Wallace, Darwin's codiscoverer of natural selection, who has just died at ninety-one, in his latest book and one of his strongest, "Social Environment and Moral Progress," proclaims that "our civilization is rotten to the core." Optimism's comfort can only be that we are rotten only to, not through, the core. The cause he also places at the door of our defective distribution. It does no good to say the world will last our time; that change is inconvenient. Something worse than inconvenience is to come, and quickly, if conditions remain unchanged.

An ex-President of the United States has just written

that "great fortunes, even when accumulated by the man himself, are of limited benefit to the country, and that they are detrimental rather than beneficial when secured through inheritance." Ten years ago this statement would have been universally denounced if made by Debs and now it is acclaimed by a great party of self-seen conservative crusaders. One remedy proposed is to tax such fortunes out of existence or at least out of inheritance. A better way to meet the evils of great fortunes is to correct distribution before they are acquired rather than forcibly distribute them through taxation thereafter. The evil, and unnecessary expense, of the latter process can be avoided by the former remedy. People are much more dissatisfied over losing something they already have than over not getting something they never had. Only distribution now needs to be corrected to have everyone, generally speaking, prosperous and contented. Enough is produced. Too much is consumed. Yet no rational plan to correct distribution has heretofore been offered except Socialism—if that be considered rational.

No other offers a change of system. No other changes distribution before the product has been distributed. All—Sherman law, Government control, La Folletteism, Lawsonism—all fads and fancies so far conceived—aim only at some pet symptom of the present system and leave the cause unchecked to create new evil. Like the sphinxes and chimeras which oppressed the ancient Greeks our octopus has only been named, not seen. Though civilized commercialism points the way to prosperity and contentment confirmed pessimists and standpatters will continue to say that distribution cannot be corrected; that maleficent monopoly always has existed and therefore always will. Antediluvians of Alexander's day asserted that his methods of war could never be improved. The choice for such now, as then, is not between standing still and changing but between changes and annihilation. The changes

now possible are, broadly, only two — progression and retrogression. Orderly and normal progression lies only along the path of Liberty to new and economic freedom. Retrogression has two courses open. It may go directly back to despotism and bureaucracy. It may reach the same goal indirectly by the radical and unknown plunge into the unploughed sea of Socialism.

If the long-cherished hopes of democracy are not to prove illusive, business must be democratized. To that end competition must be regulated. Competitors have been already regulated overmuch. Competition needs rules, not competitors' handicaps. The rules needed are the rules of civilized commercialism, for the words of Abraham Lincoln must ring true through all the future: "Nor is there any such thing as a free man being fixed for life in the condition of a hired laborer."

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NEW YORK CITY.

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